THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul Burch, Circuit Court Judge
William O. Spencer, Special Referee

Appellate Case No. 2018-001808
Civil Action No. 2017-CP-13-00804

First Citizens Bank & Trust Company and Sadie M. Murvin, Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is the ..... Appellant.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

Appellant Great American Life Insurance Company ("Great American") failed to respond to a duly issued and properly served summons and complaint purporting "a good faith belief that a response was not required." (Appellant's Br., p. 1.) Great American offered no evidence to explain how an established insurance company, named as a party defendant in a civil action, could rationally believe it was unnecessary to respond to a properly issued and served summons and complaint. Instead, Great American claimed that because it believed in good faith the company did not hold a particular insurance policy, then it was not required to respond to the lawsuit. Whether Great American did or did not hold a particular insurance policy has no bearing on its legal obligation to respond to a valid lawsuit. Great American's rationale for failing to respond to a complaint does not constitute a good faith mistake, inadvertence, or excusable neglect. The Special Referee's decision refusing to vacate the default judgment against Great American is proper.

ISSUE: Did the Special Referee abuse his discretion in refusing to vacate the default judgment against Great American for its failure to respond to a properly issued and served summons and complaint?

STATEMENT OF THE CASE

Respondents First Citizens Bank & Trust Company and Sadie M. Murvin (together, "Respondents") filed a Summons and Complaint on December 18, 2017 naming as defendants Great American and Miranda Libby Murvin a/k/a Miranda Libby Murvin Zimmerman ("Miranda Murvin") in the Court of Common Pleas for Chesterfield County. (R. pp. 21–31.) Thereafter, on January 17, 2018, Respondents filed a new Summons and Amended Complaint against Great American and Miranda Murvin, correcting clerical errors in the original Summons and Complaint. (R. pp. 32–45; R. p. 14.) One week later, the South Carolina Department of Insurance accepted service of the Summons and Amended Complaint and, consistent with its statutory obligations, forwarded the accepted process to Great American via Certified Mail, Return Receipt Requested, requesting in bold font "**You must promptly acknowledge in writing your receipt of this accepted process....**" (R. p. 47 (emphasis in original).) The Amended Complaint sought a sum certain of $136,000.00 for Great American's breach of contract for refusal to issue payment to First Citizens, in its capacity as Personal Representative of the Estate of Lonnie B. Murvin, deceased, under a single premium life insurance annuity. The Amended Complaint also sought damages for Insurance Bad Faith, Breach of the Covenant of Good Faith and Fair Dealing, and Conversion. (R pp. 27–31.)

Great American received and reviewed the Summons and Amended Complaint. (R. pp. 63–64.) Great American failed to respond to the properly served Summons and Amended Complaint. (R. pp. 52–56.) Respondent's counsel then filed an Affidavit of Default and Motion for Entry of Default by Clerk on March 5, 2018. (R. pp. 52–56, R. pp. 48–49.) Respondents further requested a judgment for sum certain of $136,000.00 as to the Amended Complaint's breach of contract claim only, and requested appointment of a Special Referee to ascertain damages attributable to the remaining causes of action. (R. p. 53, para. 7.) The Honorable Paul

Burch, Circuit Court Judge, found that Respondents were entitled to a judgment against Great American in the sum certain amount of $136,000.00, including pre-judgment interest at the statutory rate, and that a hearing to ascertain damages on the remaining causes of action was needed. (R. pp. 6–10.) The Circuit Court ordered the appointment of William O. Spencer, Jr., as Special Referee to decide any motions or other matters that might arise after the date of the Default Judgment Order. The Circuit Court further ordered "[t]hat jurisdiction of this entire matter shall be vested in the Special Referee…to determine any and all matters that might arise concerning this case thereafter, [including any] motion to set aside the default…." (R. p. 9, para. 6.)

Before a hearing to ascertain damages as to the remaining causes of action could occur, on April 16, 2018, Great American made its first appearance in the case and filed a Motion to Vacate Default Judgment. (R. pp. 85–88; R. pp. 60–62.) The hearing on Great American's Motion to Vacate Default Judgment occurred on July 12, 2018, during which Respondents and Great American each presented oral argument and a memorandum of law in support of their positions. (R. pp. 13–14.) After considering the oral arguments, memoranda, and related materials submitted by Respondents and Great American, the Special Referee entered an order denying Great American's Motion to Vacate the Default Judgment. Great American filed a Notice of Appeal.

STATEMENT OF FACTS

Facts Leading to Default Judgment

Great American received and reviewed the Summons and Amended Complaint. (R. pp. 63–64.) Great American decided, incorrectly, that Lonnie Murvin did not have an insurance policy with Great American, even though the Amended Complaint alleged that he did. (R. pp. 6364; R. p. 34, para. 5.) Great American's next decision was a critical mistake. It consciously chose not to file an Answer or Motion to Dismiss or respond at all to the lawsuit then pending against it.

Instead, Great American decided to ignore the lawsuit. Based on Great American's decision to ignore the lawsuit and not file a responsive pleading, Respondents moved for and secured an Entry of Default and Default Judgment against Great American. After receiving the Entry of Default and Default Judgment, Great American finally appeared and sought the Special Referee's permission to vacate the Default Judgment under Rule 60(b), SCRCP. The Special Referee, in the exercise of his discretion, denied Great American's Motion to Vacate in a well-reasoned, eight-page Order. Great American now contends the Special Referee abused his discretion and seeks reversal of the Order denying Great American's Motion to Vacate.

Facts of Underlying Lawsuit Against Great American

Lonnie Murvin died on April 14, 2015. (R. p. 34, para. 7.) During his life, he had purchased a single premium, deferred annuity from Great American. (R. p. 34, para. 5.) When he died, the annuity became payable to the Estate of Lonnie Murvin. (R. p. 34, para. 7.)

After Lonnie Murvin's death, Defendant Miranda Murvin filed an application for Informal Appointment in the Probate Court, asking to be appointed Personal Representative of the Estate of Lonnie Murvin. (R. p. 35, para. 8.) By Certificate of Appointment dated September 15, 2015, Defendant Miranda Murvin was appointed Personal Representative. (*Id.*) Approximately two weeks later, First Citizens filed an Application for Restraint and for Performance, representing that Lonnie Murvin had in fact executed a Last Will and Testament that designated First Citizens as Personal Representative of his Estate. (*Id.*) After learning of the Last Will and Testament, the Probate Court for Chesterfield County issued an Order of Restraint/Performance on September 30, 2015, ordering Defendant Miranda Murvin not to take any action related to the Estate of Lonnie Murvin. (*Id.*) Approximately two years later, First Citizens was appointed Personal Representative of the Estate of Lonnie Murvin on or about August 8, 2017. (R. p. 35, para. 9.)

During the period of time prior to being appointed Personal Representative, counsel for First Citizens wrote a letter to Great American on February 15, 2017 stating that First Citizens had been named the Personal Representative of the Estate of Lonnie Murvin in Lonnie Murvin's Last Will and Testament, and that First Citizens would be making a claim to the annuity proceeds. (R. p. 36, para. 11.) First Citizens requested that Great American hold the annuity proceeds until the date that First Citizens was ultimately appointed by the court to serve as Personal Representative and could thus properly make a claim to the annuity proceeds. (*Id.*) On March 28, 2017, Great American wrote to First Citizens' attorney and requested a list of documents required to process a claim and for the annuity proceeds to be paid to First Citizens. (*Id.*) In response, on April 17, 2017, First Citizens wrote back to Great American, restated that it would inform Great American when the Personal Representative was appointed, and confirmed that "the annuity is, of course, an asset of the Estate of Lonnie Murvin, and as such we have an interest in your maintaining its integrity and safety." (R. p. 36; R. p. 72, para. 10.)

Unbeknownst to First Citizens, while it was seeking to become qualified as Personal Representative and updating Great American on the process, Great American had been requesting the same list of documents from many other Murvin family members, including Miranda Murvin. (R. p. 72, para. 7.) On June 19, 2017, Miranda Murvin submitted documents to Great American, including a Certificate of Appointment dated September 15, 2015 (nearly two years old), and requested distribution of the annuity proceeds. (R. p. 72, para. 11.) On July 13, 2017, Great American processed the payment and issued the annuity proceeds to The Estate of Lonnie Murvin c/o Miranda Murvin, Personal Rep. (R. p. 73, para. 12.)

A month later, on August 17, 2017, First Citizens sent a letter to Great American stating that First Citizens had finally been appointed Personal Representative of the Estate of Lonnie

Murvin and that a First Citizens representative would be in touch regarding completion of the claim form and papers necessary to receive the annuity payment on behalf of the Estate. (R. p. 73, para. 13.) In response, Great American informed First Citizens that it had already processed a claim and issued a check to the Estate of Lonnie Murvin, care of Miranda Murvin. (R. p. 73, para. 14.) Miranda Murvin proceeded to convert the entire $136,000 to herself personally, to the detriment of the Estate of Lonnie Murvin. (R. pp. 6–10.)

After Great American refused to issue payment to First Citizens as proper Personal Representative of the Estate of Lonnie Murvin, First Citizens, in its capacity as Personal Representative of the Estate of Lonnie Murvin, and Sadie Murvin, as beneficiary of the Estate of Lonnie Murvin, filed a Complaint and Amended Complaint against Great American and Miranda Murvin for breach of contract, insurance bad faith, breach of the covenant of good faith and fair dealing, and conversion. (R. pp. 33–45.) Great American failed and refused to respond to the Amended Complaint. (R. p. 52, para. 3.) As a result, First Citizens secured an Entry of Default and Default Judgment. Great American moved to vacate the Default Judgment under Rule 60(b), SCRCP, the Special Referee denied the motion, and Great American appealed.

STANDARD OF REVIEW

"'The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.'" *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006) (quoting *Roberson v. S. Finance of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)). The trial court's "decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct. App. 1988) (citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981)). An abuse of discretion occurs when "the judge issuing the order was controlled by some error of law or when the order, based upon factual, as

distinguished from legal conclusions, is without evidentiary support." *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997) (citing *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987)).

Once default judgment has been entered, a party seeking relief must do so under Rule 60(b) of the South Carolina Rules of Civil Procedure. Rule 55(c), SCRCP. The standard for granting relief from a default judgment is more rigorous that the "good cause" that is required to be shown to secure relief from an entry of default. *Ricks*, at 374, 360 S.E.2d at 536 (citing H. Lightsey, J. Flanagan, *South Carolina Civil Procedure*, 82 (2nd Ed. 1985)). Relief from a default judgment requires showing "'mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party.'" *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 494, 713 S.E.2d 335, 339 (Ct. App. 2011) (quoting *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009)).

ARGUMENT

I. The Special Referee did not abuse his discretion in denying Great American's Motion to Vacate Default Judgment because the facts did not support a finding of good faith mistake, inadvertence, or excusable neglect.

Great American goes to great lengths to explain its purported excusable neglect based on its mistaken belief that Lonnie Murvin did not have an annuity policy with Great American. Yet Great American offered no evidence to explain why and how an insurance company could ever believe it need not respond to a duly served summons and complaint against it. Forced to consider only the arguments of counsel, the Special Referee properly applied the facts to the applicable legal standard for considering a Motion to Vacate Default Judgment under Rule 60(b). Finally, the Special Referee's decision is consistent with South Carolina appellate cases upholding denials

of a Motion to Vacate Default Judgment under Rule 60(b) when a party consciously ignored a lawsuit.

a. The Special Referee did not create heightened legal standards, but properly applied the facts to the applicable legal standard.

Rule 60(b)(1), SCRCP, "provides relief to a party from final judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect. To obtain relief from a default judgment, the movant must also show a meritorious defense." *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (citing *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (S.C. App. 1988)). Where there is "an insufficient factual basis for finding excusable neglect, [the court] need not decide whether [a party] has shown a meritorious defense." *Id.* at 243, 399 S.E.2d 783; *see also Stearns Bank Nat. Ass'n v. Glenwood Falls, L.P.*, 373 S.C. 331, 341, 644 S.E.2d 793, 798 (2007) (holding that because of its ultimate disposition, "we need only address [Defendant's] excusable neglect claim...."). Though South Carolina appellate courts have analyzed Rule 60(b)(1) requests for relief from judgment through the four-part test articulated by Great American, no court has mandated the four-part test or found error for not explicitly citing it. In fact, in both *Tri-County Ice* and *Stearns Bank Nat. Ass'n*, the South Carolina Supreme Court did not apply the four-part test promoted by Great American in its opening brief.

In challenging the Special Referee's well-reasoned opinion, Great American contends the Special Referee applied a heightened legal standard by opining that "Great American is an insurance company and should have been diligent," and that "Great American should not be rewarded for such careless behavior." (Appellant's Initial Br. p. 12–13). Great American claims this created an unlawful "sophistication test" and an additional condition that mistakes not be "careless." (*Id.*)

Great American confuses applying facts to a legal standard with changing that legal standard. The Special Referee specifically acknowledged the applicable legal standard, noting that "[t]he movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief," and "that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends." (R. p. 17.) The Special Referee also properly explained that Great American sought relief under Rule 60(b) claiming that "the judgment should be set aside upon the grounds that the default judgment was the result of mistake, inadvertence or excusable neglect and that Plaintiff would not be prejudiced by vacating the default judgment." (R. p. 15.) Then the Special Referee applied the facts of the case to determine whether the material evidence supported a finding of mistake, inadvertence, or excusable neglect. The Special Referee found that the reasons cited by Great American to attempt to prove mistake, inadvertence, or excusable neglect (the policy number was wrong and an attachment to the Amended Complaint was incorrect) were insufficient to meet the particularized showing necessary to be afforded relief under Rule 60(b). In explaining that insufficiency, the Special Referee explained the facts that Great American is an insurance company, that Great American acted carelessly, and that Great American should have acted more diligently. Based on these facts, the Special Referee decided that Great American presented an insufficient factual basis for finding excusable neglect. (R. p. 20.) A well-reasoned opinion applying facts to law is what is required by a trial judge, and Great American's challenge to the application of facts to law here should be denied.

b. There is no record evidence of Great American's purported good faith mistake, inadvertence, or excusable neglect in failing to respond to the Amended Complaint.

Great American relies exclusively on an affidavit of Keith A. Lindsay, Supervisor, Claims with Great American (the "Lindsay Affidavit") (R. pp. 71–76), as the evidentiary basis for its

Motion to Vacate Default Judgment. However, the facts set out in the Lindsay Affidavit relate *solely* to Great American's proffered meritorious defense. The Lindsay Affidavit says *nothing* about how a conscious decision to ignore a lawsuit qualifies as excusable neglect.

The South Carolina Supreme Court considered a Rule 60(b)(1) motion seeking to vacate a default judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect in the case of *Tri-County Ice*, *supra*. The defendant offered evidence of illness and incapacity of the defendant's principal shareholder as an explanation for why the defendant failed to respond to a summons and complaint. *Id.* at 242, 399 S.E.2d at 782. The Supreme Court considered record evidence of the principal shareholder's medical history, surgery schedules, daily work habits, and his sons' assistance in his business affairs. *Id.* at 240–43, 399 S.E.2d at 782–83. In upholding denial of the motion to vacate, the Supreme Court explained, "we agree with the trial judge's ruling that [principal shareholder] failed to show excusable neglect as the medical evidence does not support [his] claim that he was incapacitated. *We can find no semblance of a justification for [principal shareholder's] failure to protect his rights.*" *Id.* at 243, 399 S.E.2d at 783 (emphasis added).

Unlike the defendant in *Tri-County Ice*, Great American offers no explanation for its failure to protect its rights. The Lindsay Affidavit details why Great American delivered the annuity proceeds to Miranda Murvin and why Great American blames First Citizens in some way for purportedly contributing to Great American's payment of the annuity proceeds to the wrong person. In other words, it presents Great American's purported defense to the lawsuit. However, the Lindsay Affidavit is silent as to why Great American failed to respond to the duly served Summons and Amended Complaint.

Great American's Memorandum in Support of its Motion to Vacate Default Judgment provides the only insight into Great American's failure to respond to the summons and complaint. Thus, Great American sought to prove excusable neglect exclusively through the arguments of counsel. "It is axiomatic that arguments of counsel are not evidence." *State v. Manning*, 418 S.C. 38, 47 n.8, 791 S.E.2d 148, 152 n.8 (2016) (citing *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22 (1987)). The Special Referee could have properly denied Great American's Motion to Vacate on this basis alone. *See Bowers v. Bowers*, 304 S.C. 65, 67–68, 403 S.E.2d 127, 129 (Ct. App. 1991) (noting that "[t]he movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief," and denying the motion to vacate where a defendant relied only on "allegations contained in his unverified counterclaim and the arguments made by his attorney during a hearing on this motion").

Despite a total lack of relevant record evidence, the Special Referee chose to consider Great American's arguments of counsel and still determined Great American failed to demonstrate excusable neglect. Great American argued in its Memorandum in Support of its Motion to Vacate Default Judgment that, "Great American concluded that it had been mistakenly served and therefore did not need to timely answer the Complaint." (R. p. 64.) It continued, "Great American based its decision on the incorrect contract number and number sequence, the attachment of a statement from an unrelated corporation, and Great American's own past experience regarding previous litigants' confusion regarding the acronym 'MNL.'" (R. p. 66.) But its arguments of counsel offer no explanation of *why* Great American did not respond to the Amended Complaint. For example, there is no testimony or argument of counsel stating that the person receiving the Amended Complaint at Great American did not understand that defendants in lawsuits must file a response. Or that the person receiving the Amended Complaint at Great American quit their job

and did not tell anyone about the lawsuit. These proffered excuses would be unlikely to support a finding of excusable neglect. But at least they would be an attempt by Great American to arm the Special Referee with information necessary to consider *any* factual basis to support a finding of excusable neglect.

Here, Great American provides absolutely no factual explanation for its decision not to file a responsive pleading to a duly served summons and complaint. Instead, Great American states (through argument of counsel) that it believed it did not have an insurance policy with Lonnie Murvin. It does not address how Great American made the illogical leap that not having an insurance policy with someone justifies intentionally ignoring a duly served summons and complaint. Great American attempted to push the Special Referee into making that illogical leap, and now contends the Special Referee abused his discretion in (rightfully) refusing to do so. Because Great American failed to provide *any* evidence justifying its decision to ignore a lawsuit against it, the Special Referee did not abuse his discretion in denying Great American's Motion to Vacate the Default Judgment.[1]

c. South Carolina case law confirms that the Special Referee did not abuse his discretion in denying Great American's Motion to Vacate under Rule 60(b).

South Carolina case law justifies the Special Referee's decision and highlights a critical distinction between successful and unsuccessful motions to vacate. In a successful motion to vacate, a litigant almost always shows that it attempted to protect its rights, but by some

[1] This argument accepts Great American's claim that it believed in good faith it did not have a policy with Lonnie Murvin because the Amended Complaint included an incorrect policy number and attached a policy from another insurance company. However, Great American could have quickly and easily discovered it *did* have a policy with Lonnie Murvin by searching its records for that name. Great American's failure to search its records for the name "Lonnie Murvin" further demonstrates Great American's indefensible neglect in choosing to ignore the matter altogether.

unfortunate error, it failed. In an unsuccessful motion to vacate, a litigant made a conscious decision to ignore a lawsuit and purposefully did not file a responsive pleading.

In *Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (2009), a defendant succeeded in overturning a trial court's denial of a motion to vacate a default judgment when he demonstrated a reasonable belief that his case had been continued, when in fact it had not. The Court noted that "Watkins had every reason to believe his case had been continued and that he did not need to appear...." when he had notified the magistrate court that he was unable to appear. *Id.* at 325, 681 S.E.2d at 917. There is a fundamental difference in the *Williams* case, in which a motion to vacate should have been granted, and the following cases, in which a motion to vacate was properly denied. The difference is a good-faith mistaken belief versus a conscious decision to ignore a legal proceeding.

In *Tri-County Ice*, *supra*, the Court upheld denial of a motion to vacate default judgment when the party "chose to ignore" a party name misnomer and attack the validity of the judgment on that basis. *Tri-County Ice*, at 241, 399 S.E.2d at 782.

In *Sundown Operating Co., supra*, the court upheld denial of a motion to set aside entry of default when a defaulted party asserted its insurance agent was negligent in failing to answer the complaint. *Sundown Operating Co.* at 609–10, 681 S.E.2d at 889. The Court considered the totality of circumstances leading to the failure to respond, including the insurance agent's negligence and the defendant's failure to forward the summons and complaint for two weeks, and held the defendant failed to show good cause as to why the summons and complaint went unanswered. *Id.*

In *ITC Commercial Funding, supra*, the Court upheld denial of a motion to vacate default judgment when a party claimed her age and mental state prevented her from understanding the

situation, that she believed the loan referenced in the complaint was current, that she was not aware of the lawsuit, that she thought she was represented by an attorney, and that she had no experience working with attorneys. *ITC Commercial Funding* at 494, 713 S.E.2d at 339. The Court explained the trial court did not abuse its discretion where the record reflected the appellant was served at her home with the summons and complaint, failed to show through medical testimony that she had diminished capacity, and failed to show that her former counsel engaged in any misleading conduct. *Id.* at 495, 713 S.E.2d at 339.

In each of these cases, the party seeking to vacate a default judgment under Rule 60(b) offered a factual basis for finding excusable neglect—the belief that a case had been continued, the belief that an insurance agent would answer the lawsuit, or age and mental state problems. In this case, Great American offers *no* factual basis for finding excusable neglect, because the Lindsay Affidavit speaks only to Great American's effort to blame First Citizens for Great American paying the annuity proceeds to the wrong person. Considering the arguments of counsel, Great American claims that it believed it did not have a policy with Lonnie Murvin. Even accepting counsel's argument as evidence, Great American still offers no explanation for the illogical leap it now insists the Special Referee should have made. How does not having a particular insurance policy excuse a defendant from the obligation to respond to lawsuit? Great American offers no evidence to explain this.

Great American made a conscious decision to ignore a lawsuit against it, and the Special Referee thus properly denied Great American's motion to vacate.

II. Because the Special Referee determined there was an insufficient factual basis for finding excusable neglect, he did not need to consider Great American's purported meritorious defense.

The Special Referee focused his analysis on Great American's proffered reasons for its failure to act and justifiably denied Great American's Motion to Vacate. Where a Court determines

that there "an insufficient factual basis for finding excusable neglect, [the court] need not decide whether [a party] has shown a meritorious defense." *Tri-County Ice* at 243, 399 S.E.2d at 783; *see also Stearns Bank*, 373 S.C. at 341, 644 S.E.2d at 798 (holding that because of its ultimate disposition, "we need only address [Defendant's] excusable neglect claim...."); *ITC Commercial Funding* at 496, 713 S.E.2d at 339–40 ("Having concluded the trial court did not abuse its discretion in finding the Appellant was not entitled to relief on any of the grounds specified in Rule 60(b), SCRCP, we need not address whether the Appellant has a meritorious defense.").

The Special Referee reasonably concluded that Great American failed to offer sufficient factual support for a finding of mistake, inadvertence, or excusable neglect. As a result, the Special Referee rightfully did not decide whether Great American put forth a meritorious defense.

CONCLUSION

The Special Referee considered the arguments presented by Great American claiming to support a finding of mistake, inadvertence, or excusable neglect under Rule 60(b), SCRCP. The Special Referee reasonably concluded that Great American's Motion to Vacate Default Judgment should be denied. Because the Special Referee did not abuse his discretion in denying Great American's Motion to Vacate, the Special Referee's decision should be affirmed.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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This the 17th Day of April 2019

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In the Court of Common Pleas

Paul Burch, Circuit Court Judge
William O. Spencer, Special Referee

Appellate Case No. 2018-001808
Civil Action No. 2017-CP-13-00804

First Citizens Bank & Trust Company and Sadie M. Murvin, Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman and
Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is the .....Appellant.

CERTIFICATION OF COUNSEL

The undersigned certifies that this final brief complies with Rule 211, SCACR.

Chelsea J. Clark, Esq.

This the 17th day of April 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

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PROOF OF SERVICE

The undersigned certifies that she has served the Final Brief of Respondents on Appellant, Great American Life Insurance Company, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 17, 2019, addressed to its attorneys as follows:

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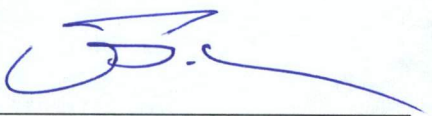

Chelsea J. Clark, Esq.